

1 TIFFANY CHEUNG (CA SBN 211497)
TCheung@mofo.com
2 MICHAEL BURSHTeyN (CA SBN 295320)
MBurshteyn@mofo.com
3 EMANI N. OAKLEY (CA SBN 347705)
EOakley@mofo.com
4 MORRISON & FOERSTER ^{LLP}
425 Market Street,
5 San Francisco, California 94105-2482
Telephone: 415.268.7000
6 Facsimile: 415.268.7522

7 NANCY R. THOMAS (CA SBN 236185)
NThomas@mofo.com
8 MORRISON & FOERSTER LLP
707 Wilshire Boulevard, Suite 6000
9 Los Angeles, California 90017-3543
Telephone: 213.892.5200
10 Facsimile: 213.892.5454

11 ELISABETH HUTCHINSON (Pro Hac Vice)
EHutchinson@mofo.com
12 MORRISON & FOERSTER LLP
7370 Seventeenth Street
13 4200 Republic Plaza
Denver, Colorado 80202-5638
14 Telephone: 303.592.1500
Facsimile: 303.592.1510

15 Attorneys for Defendant
16 COMMUNITY.COM, INC.

17 UNITED STATES DISTRICT COURT
18 CENTRAL DISTRICT OF CALIFORNIA
19

20 MICHAEL MCGINNIS and
21 CYNDY BOULTON, individually
22 and on behalf of all others similarly
situated,

23 Plaintiffs,

24 v.

25 COMMUNITY.COM, INC.,

26 Defendant.
27
28

Case No. 2:23-cv-02426-SB-JPR

**STIPULATION THAT COURT'S
PRIOR ORDER DISMISSING
CERTAIN CLAIMS APPLIES TO
FIRST AMENDED COMPLAINT
AND TO RESUBMIT
COMMUNITY.COM'S FULLY
BRIEFED MOTION TO DISMISS**

Courtroom: 6C
Judge: Hon. Stanley Blumenfeld, Jr.

Action Filed: March 31, 2023
Trial Date: August 5, 2024

1 Plaintiff Cyndy Boulton and Defendant Community.com, Inc. (Community)
2 (collectively, the “Parties”), by and through their undersigned counsel, hereby
3 stipulate and agree as follows:

4 WHEREAS, on July 17, 2023, the Court issued an Order granting the
5 Parties’ Stipulation to Dismiss Claims Based on Dismissal in Prior Related Matter
6 and dismissing Plaintiff’s CIPA section 631 and ECPA claims without leave to
7 amend, with further details as stated in the Order. (ECF No. 36.)

8 WHEREAS Defendant Community’s Motion to Dismiss the Complaint for
9 lack of subject matter jurisdiction and failure to state a claim as to the remaining
10 two causes of action was filed on July 14, 2023, is fully briefed, and was set for
11 hearing on August 18, 2023;

12 WHEREAS, on August 4, 2023, the Court ordered the Parties to show cause
13 why it should not decline to exercise supplemental jurisdiction over Plaintiff’s
14 state law claims after the Court’s dismissal of Plaintiff’s ECPA claim. (ECF No.
15 48.) In response, Plaintiff requested leave to amend the complaint to plead
16 diversity jurisdiction under the Class Action Fairness Act (CAFA). Community
17 did not oppose the request, including based on the liberal standard for amendments
18 to the pleading at this early stage. (ECF No. 50.)

19 WHEREAS, on August 15, 2023, the Court issued an Order declining to
20 exercise supplemental jurisdiction over the state law claims, but granting Plaintiff
21 leave to amend the complaint to plead CAFA jurisdiction. (ECF No. 51.)

22 WHEREAS the Court further ordered that if Plaintiff files the first amended
23 complaint by August 19, 2023, “the parties may file a stipulation (1) stating the
24 parties’ intent to resubmit the motion to dismiss, the opposition thereto, and the
25 reply as filed (which will then be treated as a fully briefed motion to dismiss the
26 first amended complaint) and (2) request to have the matter heard on
27 September 15, 2023.” (*Id.* at 2.)
28

1 WHEREAS, on August 19, 2023, Plaintiff timely filed her First Amended
2 Complaint adding allegations regarding subject matter jurisdiction under CAFA,
3 but leaving the remaining allegations and the paragraph numbers of the remaining
4 allegations unchanged. (ECF No. 53.)

5 WHEREAS, in accordance with the Court's Order, the Parties stipulate
6 to: a) have the Court's Order dismissing Plaintiff's ECPA and CIPA section 631
7 claims (ECF No. 36) apply to the same claims alleged in the First Amended
8 Complaint; and b) resubmit Community's motion to dismiss, Plaintiff's
9 opposition, and Community's reply as filed (ECF Nos. 32, 44, 47) to be treated as
10 a fully briefed motion to dismiss Plaintiff's First Amended Complaint.

11 The Parties further request that the hearing on the motion to dismiss be set
12 for September 15, 2023.

13 NOW THEREFORE, it is agreed and stipulated, subject to the approval of
14 the Court, that

- 15 1. The Court's Order Granting Stipulation to Dismiss Claims Based on
16 Dismissal in Prior Related Action applies to Plaintiff's First Amended
17 Complaint. The Causes of Action for Violations of CIPA, California Penal
18 Code § 631, and for Violations of ECPA, 18 U.S.C. § 2511(1)(a), in the
19 First Amended Complaint, are dismissed without leave to amend on the
20 same terms and for the reasons stated in the Court's Order Granting
21 Stipulation to Dismiss Claims Based on Dismissal in Prior Related Action
22 (ECF No. 36);
- 23 2. Community's Motion to Dismiss and the Parties' briefing on that Motion
24 (ECF Nos. 32, 44, 47), are resubmitted as filed to be treated as a fully
25 briefed motion to dismiss the First Amended Complaint; and
- 26 3. Community's Motion to Dismiss the remaining claims in the First
27 Amended Complaint will be heard on September 15, 2023 at 8:30 a.m.
28

1 Dated: August 23, 2023

MORRISON & FOERSTER LLP

2
3 By: /s/ Nancy R. Thomas
4 Nancy R. Thomas

5 *Attorneys for Defendant*
6 COMMUNITY.COM, INC.

7 Dated: August 23, 2023

LIPPSMITH LLP

8
9 By: /s/ Graham B. LippSmith
10 Graham B. LippSmith

11 *Attorneys for Plaintiff*
12 CYNDY BOULTON

13
14
15 **ATTESTATION**

16 Pursuant to Civil L.R. 5-4.3.4, I, Nancy Thomas, as the ECF user under
17 whose credentials this document is filed, attest that concurrence in the filing of this
18 document has been obtained from each of the other signatories. I further attest that
19 I have on file all holographic signatures corresponding to any signatures indicated
20 by a conformed signature within this e-filed document. I declare under penalty of
21 perjury under the laws of California and the United States of America that the
22 foregoing is true and correct. Executed at Los Angeles, California this 23rd day of
23 August 2023.

24
25
26 /s/ Nancy R. Thomas
27 Nancy R. Thomas